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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

INTELLECTUAL CAPITAL
COMPANY, LLC,

Plaintiff and Respondent,

v.

PLATINUM HOME MORTGAGE
CORPORATION,

Defendant and Appellant.

E069838

(Super.Ct.No. MCC1700834)

OPINION

APPEAL from the Superior Court of Riverside County. Raquel A. Marquez,
Judge. Affirmed.

Jenkins Kayayan, Jonathan M. Jenkins and Lara Kayayan for Defendant and
Appellant.

The Biondi Law Firm and Glen J. Biondi for Plaintiff and Respondent.

Defendant and appellant Platinum Home Mortgage Corporation (Platinum)
appeals the trial court's denial of its petition to compel arbitration against plaintiff and
respondent Intellectual Capital Company, LLC (Intellectual). Platinum contends that

although Intellectual was not a signatory to the pertinent agreements, it is still entitled to enforce them against Intellectual on agency and equitable estoppel principles. We disagree and affirm.

I. FACTS

According to the operative first amended complaint, Platinum is a mortgage bank that at one point had offices in Temecula and Hemet. Its office spaces were not leased to Platinum but rather to Intellectual, whose President, Darrell Giannone, was employed by Platinum and its Branch Manager at those locations. In 2014 and 2015, those leases expired. Platinum was unwilling to enter into new leases directly with the lessors, as Platinum wanted only a one-year lease and the lessors wanted longer lease terms. As a result, at Platinum's direction, Intellectual entered into multi-year leases with the lessors (the Leases) and subleases with Platinum (the Subleases).

Later, Giannone learned that, pursuant to the Department of Housing and Urban Development's FHA Title II Mortgagee Approval Handbook (the HUD Handbook), Intellectual should not have been a party to the Leases. The HUD Handbook also required mortgagees such as Platinum to pay all operating expenses for its branches and prohibited Platinum from passing those costs on to others. Intellectual paid for furnishings, office equipment, and supplies for the Temecula and Hemet offices and was not reimbursed.

Giannone filed a complaint with the Consumer Financial Protection Bureau. When Platinum learned of the complaint, it terminated its employment agreement with Giannone via a letter dated January 31, 2017 (the Letter). The Leases contained early

termination or cancellation clauses, so in the Letter, Platinum agreed to pay the associated fees if Intellectual gave notice to terminate the Leases to the lessors that same day. Although Platinum has paid Intellectual the early termination fee on the Lease for the Hemet office, it did not do so for the Temecula Lease.

Intellectual filed the operative complaint in this action in September 2017, alleging causes of action against Platinum for breach of contract, intentional misrepresentation, negligence per se, indemnification, and declaratory relief. No individual is a party to the action.

Platinum filed a petition to compel arbitration and stay court proceedings pending the arbitration, arguing that Giannone signed an employment agreement containing an applicable arbitration provision when he was hired as Branch Manager. Platinum also argued that Terry Duke, who purportedly is Intellectual's only member other than Giannone, signed a substantively identical employment agreement. The arbitration provisions are schedules to the employment agreements.

Even though Intellectual was not a signatory to either agreement, Platinum argued that Intellectual should be compelled to arbitrate under agency and equitable estoppel principles, and that the case actually arises under Giannone's employment agreement. In opposition, Intellectual argued that the "crux" of its complaint was that Platinum breached the Leases and Subleases, not any employment agreement, and that no exception allowing nonsignatories to compel arbitration applied. The trial court denied the petition.

II. DISCUSSION

“Whether an arbitration agreement is operative against a nonsignatory is determined by the trial court and reviewed de novo.” (*Suh v. Superior Court* (2010) 181 Cal.App.4th 1504, 1512.)

“[A]s a general rule, ‘[t]he right to arbitration depends on a contract, and a party can be compelled to submit a dispute to arbitration only if the party has agreed in writing to do so.’” (*Jensen v. U-Haul Co. of California* (2017) 18 Cal.App.5th 295, 300 (*Jensen*)). “Even the strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement or who have not authorized anyone to act for them in executing such an agreement.” (*Ibid.*) This is because “[a]rbitration is consensual in nature.” (*County of Contra Costa v. Kaiser Foundation Health Plan, Inc.* (1996) 47 Cal.App.4th 237, 244.) “Nevertheless, there are circumstances under which persons who have not signed an agreement to arbitrate are bound to do so.” (*Jensen, supra*, at p. 300.)

Here, Platinum seeks to enforce against Intellectual two employment agreements that Intellectual did not sign. Platinum argues that agency and equitable estoppel both require Intellectual to arbitrate. We find neither applicable here.

A. Agency

Platinum contends that Giannone was Intellectual’s agent because he was its manager; therefore, Platinum contends, it is entitled to enforce Giannone’s arbitration agreement against Intellectual, his principal. We assume for the sake of argument that Giannone was Intellectual’s agent “for the purpose of its business or affairs.” (Corp.

Code, § 17703.01, subd. (b)(2) [“[e]very manager is an agent of the limited liability company for the purpose of its business or affairs” if limited liability company is manager-managed].) Platinum must still show, however, that the contracting parties intended to bind Intellectual when signing the employment agreement, as not every agreement an agent enters into is on a principal’s behalf.

“[J]ust as when any issue turns on contractual interpretation, we must look to the mutual intent of the parties.” (*Fuentes v. TMCSF, Inc.* (2018) 26 Cal.App.5th 541, 549.)
““Such intent is to be inferred, if possible, solely from the written provisions of the contract.” [Citations.] “If contractual language is clear and explicit, it governs.””
(*Ibid.*)

Nothing in the employment agreement indicates the parties intended that its terms be binding on Intellectual. First, Intellectual is never mentioned in the employment agreement. Second, although “[a] contract made in the name of an agent may be enforced against an *undisclosed* principal, and extrinsic evidence is admissible to identify the principal” (*Sterling v. Taylor* (2007) 40 Cal.4th 757, 773, italics added), Platinum has not offered any extrinsic evidence to establish that Giannone ever intended to enter into the employment agreement on Intellectual’s behalf. Third, the arbitration provision refers to the parties as “Employee” and “Employer” and is part of Giannone’s employment agreement; it is not natural to construe an agreement regulating Giannone’s employment relationship with Platinum as indicating that the parties believed or intended Giannone, the employee, to be contracting on someone else’s behalf, especially an entity. Finally, even if Platinum subjectively believed that Intellectual would be bound by the

employment agreement, the arbitration provision limits arbitration to claims that “Employee [*i.e.*, Giannone] may have against Employer [*i.e.*, Platinum], or that Employer may have against Employee” In other words, only claims between Giannone and Platinum must be arbitrated, and we see nothing that might allow the term “Employee” to include Intellectual. “However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.” (Civ. Code, § 1648.) We therefore find no reason to believe that Giannone or Platinum intended for Giannone to act on Intellectual’s behalf in signing his employment agreement with Platinum, even if he may have been Intellectual’s agent in other situations. Accordingly, Platinum cannot enforce Giannone’s arbitration agreement against Intellectual on an agency theory here.

Platinum relies on cases that either make broad, general statements that do not dictate another outcome or are inapplicable. For example, Platinum cites *Westra v. Marcus & Millichap Real Estate Investment Brokerage Co., Inc.* (2005) 129 Cal.App.4th 759, which states that “[a] nonsignatory to an agreement to arbitrate may be required to arbitrate . . . if a preexisting confidential relationship, such as an agency relationship between the nonsignatory and one of the parties to the arbitration agreement, makes it equitable to impose the duty to arbitrate upon the nonsignatory.” (*Id.* at p. 765.) This statement from *Westra*, however, simply expands upon what the court stated in the previous sentence, namely that “[t]here are exceptions to the general rule that a nonsignatory . . . cannot be compelled to arbitrate . . . without being a party to the arbitration agreement.” (*Ibid.*) The statement thus merely acknowledges that there are

exceptions to the general rule. It does not stand for the proposition that a preexisting agency relationship, without more, makes an agreement binding on anyone a signatory may be an agent for. Similarly, *Letizia v. Prudential Bache Securities, Inc.* (9th Cir. 1986) 802 F.2d 1185, which Platinum also cites, makes a similar, generic statement in noting that “nonsignatories of arbitration agreements may be bound by the agreement under ordinary contract and agency principles.” (*Id.* at p. 1187.) As mentioned, the fact that Giannone may be Intellectual’s agent for the purpose of its business or affairs does not mean that Intellectual will be bound by all agreements Giannone enters into. These cases therefore provide little help to Platinum.

The other cases Platinum relies on—*Dryer v. Los Angeles Rams* (1985) 40 Cal.3d 406, *Thomas v. Westlake* (2012) 204 Cal.App.4th 605, and *Rowe v. Exline* (2007) 153 Cal.App.4th 1276—do not apply, as they each in essence apply the rule that “[i]n an action *against an agent* upon a contract between a third person and the principal to which the agent is a party, the agent has all the defenses which arise out of the transaction itself” (Rest.2d of Agency, § 334, italics added.) All three cases involve a signatory plaintiff’s allegations that nonsignatory defendants were *agents* (or alter egos) of a signatory to an arbitration agreement; the nonsignatory agents were held to be “entitled to the benefit of the arbitration provisions.” (*Dryer, supra*, at p. 418; see also *Thomas, supra*, at pp. 614-615; *Rowe, supra*, at p. 1285.) There is no action against an agent here—or by one, for that matter—so these cases do not apply.

B. *Equitable Estoppel*

“‘Equitable estoppel precludes a party from asserting rights ‘he otherwise would have had against another’ when his own conduct renders assertion of those rights contrary to equity.’” (*Metalclad Corp. v. Ventana Environmental Organizational Partnership* (2003) 109 Cal.App.4th 1705, 1713.) A nonsignatory plaintiff may be estopped from avoiding arbitration “‘if it knowingly seeks the benefits of the contract containing the arbitration clause’” (*Crowley Maritime Corp. v. Boston Old Colony Ins. Co.* (2008) 158 Cal.App.4th 1061, 1070) or if it “seeks enforcement of other provisions” of that contract (*Metalclad Corp.*, *supra*, at p. 1713; see also *NORCAL Mutual Ins. Co. v. Newton* (2000) 84 Cal.App.4th 64, 81.) A nonsignatory plaintiff may also be estopped “when he or she asserts claims that are ‘dependent upon, or inextricably intertwined with’ the underlying contractual obligations of the agreement containing the arbitration clause.” (*Jensen*, *supra*, 18 Cal.App.5th at p. 306; see also *JSM Tuscany, LLC v. Superior Court* (2011) 193 Cal.App.4th 1222, 1241.)

None of Intellectual’s causes of action satisfies any of these tests. The breach of contract, intentional misrepresentation, indemnification, and declaratory relief causes of action focus exclusively on Platinum’s alleged nonpayment of the Temecula Lease termination fee, which, as the operative complaint alleges, is based on the Letter. For instance, Intellectual alleges that Platinum “breached the [Letter] by failing to pay the early termination/cancellation fees and costs for the Temecula office,” that it “did not intend on paying the early termination/cancellation fee for the Temecula Office,” and that Intellectual “is liable for the cancellation fee” to the lessors and therefore “entitled to

indemnity from Platinum.” Intellectual furthermore seeks a “declaration as to whether Platinum breached the [Letter] and whether Platinum owes the cancellation fee for the Temecula office.” These causes of action have little if anything to do with the employment agreements.¹

The remaining cause of action for negligence per se is based on violations of the HUD Handbook’s rules requiring Platinum to pay for various operating expenses and enter into contracts in its own name. Platinum observes that the employment agreements provide that the branch manager “will be reimbursed for all reasonable expenses incurred by [the branch manager] in the performance of the services hereunder” The mere fact that the HUD Handbook and employment agreements both mention payment of expenses, however, does not mean that this cause of action is inextricably intertwined with or otherwise sufficiently related to the employment agreements. Platinum’s obligation to reimburse under the employment agreements, like all of its obligations under the employment agreements, are to Giannone or Duke only, not to Intellectual. Both sides note this in their briefs. Similarly, to the extent the employment agreements require anyone other than Platinum to pay for expenses, it would be only Giannone or Duke, not Intellectual. Thus, Intellectual’s allegation that “Platinum failed to abide by and follow the [HUD Handbook], by, among other things, having *Intellectual* pay for and

¹ Given these allegations, Intellectual’s repeated contention in the trial court and on appeal that this lawsuit is primarily about the Leases and Subleases is somewhat perplexing. Four of the five causes of action directly pertain to the Letter, not the employment agreements (as Platinum contends) or the Leases and Subleases (as Intellectual contends).

provide furnishings, office equipment and supplies” (italics added) has nothing to do with the employment agreements. The same goes for Intellectual’s allegation that Platinum violated the HUD Handbook by “requir[ing] Intellectual” to enter into the Leases; proof at trial will have to depend on something other than the employment agreements, to which Intellectual is not a party. Accordingly, equitable estoppel does not apply to the negligence per se cause of action or other causes of action.

Platinum contends that several allegations show that the employment agreements are “central” to “all of the events and circumstances giving rise to” the entire lawsuit. We do not consider, however, whether the employment agreements are sufficiently related to the “events and circumstances” underlying the lawsuit. Instead, we consider whether Intellectual’s *causes of action* are sufficiently related to the employment agreements. (*Jensen, supra*, 18 Cal.App.5th at p. 306.) Platinum essentially argues that the employment agreements need only be a “but for” cause of the lawsuit in order for equitable estoppel to apply, an argument that other courts have rejected. (See *DMS Services, LLC v. Superior Court* (2012) 205 Cal.App.4th 1346, 1357 [“A standard indemnity claim, for example, does not exist *but for* the precursor action giving rise to it. Nevertheless, in those circumstances, the doctrine of equitable estoppel does not bind nonsignatory indemnitors to an arbitration agreement between the parties to the underlying action when . . . the indemnity claims are not founded in the contract containing the arbitration provision and there is no preexisting relationship between the defendants on which to base an estoppel.”].)

Platinum also contends that Intellectual should be compelled to arbitrate because of its “preexisting relationship” with Giannone. This, however, is in substance an agency argument, which we have already rejected. *Crowley*, for instance, noted that a nonsignatory can be compelled to arbitrate “where ‘a preexisting relationship existed between the nonsignatory and one of the parties to the arbitration agreement,’” but it then stated that “[e]xamples of the preexisting relationship include agency, spousal relationship, parent-child relationship and the relationship of a general partner to a limited partnership” and that “[i]n the absence of such a relationship, or third party beneficiary status, courts will generally not compel a nonsignatory to arbitrate.” (*Crowley Maritime Corp. v. Boston Old Colony Ins. Co.*, *supra*, 158 Cal.App.4th at p. 1070; see also *Westra v. Marcus & Millichap Real Estate Investment Brokerage Co., Inc.*, *supra*, 129 Cal.App.4th at p. 765 [“A nonsignatory to an agreement to arbitrate may be required to arbitrate . . . if a preexisting confidential relationship, such as an agency relationship between the nonsignatory and one of the parties to the arbitration agreement, makes it equitable to impose the duty to arbitrate upon the nonsignatory.”].) Moreover, Platinum’s reliance here on an unpublished federal district court case applying the preexisting relationship test, *Xinhua Holdings Ltd. v. Electronic Recyclers Intern., Inc.* (E.D. Cal. Dec. 26, 2013) 2013 WL 6844270, is misplaced, as there the nonsignatory plaintiffs were successive parent companies of the signatory plaintiff, which other cases have held can be subject to arbitration even if it is a nonsignatory.² (*Id.* at p. *8; see

² “Although we may not rely on unpublished California cases, the California
[footnote continued on next page]

Metalclad Corp. v. Ventana Environmental Organizational Partnership, supra, 109 Cal.App.4th at p. 1718.)

C. *Summary*

Neither agency nor equitable estoppel applies to compel Intellectual, a nonsignatory, to arbitrate its causes of action against Platinum. Even if Giannone was Intellectual’s agent for limited purposes, his employment agreement with Platinum is not binding on Intellectual absent evidence that the parties so intended. Intellectual does not seek to obtain benefits from or enforce the employment agreements in any of its causes of action, and the causes of action are not dependent upon or inextricably intertwined with the employment agreements.

III. DISPOSITION

The order is affirmed. Intellectual is awarded its costs on appeal.

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RAPHAEL

J.

We concur:

CODRINGTON

Acting P. J.

SLOUGH

J.

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Rules of Court do not prohibit citation to unpublished federal cases, which may properly be cited as persuasive, although not binding, authority.” (*Landmark Screens, LLC v. Morgan, Lewis & Bockius, LLP* (2010) 183 Cal.App.4th 238, 251, fn. 6.)